

JOHN SAMPSON

IBLA 96-530

Decided August 17, 1999

Appeal from a decision of the Challis Resource Area Manager, Bureau of Land Management, cancelling a Private Maintenance and Care Agreement for a wild free-roaming horse with freeze mark No. 81361120.

Reversed.

1. Evidence: Sufficiency--Wild Free-Roaming Horses and Burros Act

A BLM decision cancelling a private maintenance and care agreement will be reversed where the record on appeal contains insufficient evidence of improper care or abandonment of the horse covered by the agreement or the existence of any other failure to comply with the terms of the agreement sufficient to justify such action.

APPEARANCES: Kelly Kumm, Esq., Pocatello, Idaho, for appellant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

John Sampson has appealed from a decision of the Challis Resource Area Manager, Bureau of Land Management (BLM), dated August 15, 1996, cancelling his Private Maintenance and Care Agreement (PMACA), dated September 17, 1994, for a wild horse, known as Cobalt, freeze mark No. 81361120. BLM had assigned the horse to appellant under authority of the Wild Free-Roaming Horses and Burros Act of December 15, 1971, as amended, 16 U.S.C. ' ' 1331-1340 (1994).

On September 17, 1994, appellant signed a PMACA for the care of Cobalt. In a letter to appellant dated July 10, 1996, BLM noted that the PMACA indicates that the horse is located at the residence of Barbara Sampson, appellant's ex-wife, and that she had contacted BLM regarding the horse. ^{1/} She informed BLM that she had provided proper care and treatment for the horse at her expense since October 1995 and submitted documentation to support her claim. According to BLM, Barbara Sampson

^{1/} In a letter to U.S. Senator Larry E. Craig dated Sept. 6, 1996, Sampson related that he and his wife separated in July 1995 and that the divorce was final in July 1996.

stated that appellant had been unwilling to fulfill his financial obligation for the care of the horse since his separation and divorce from her. Referring to the PMACA, BLM advised appellant that he was financially responsible for providing proper care of the horse.

BLM informed appellant that it had been unable to reach him by telephone regarding this matter. BLM required appellant to show cause within 15 days of the date of the letter why BLM should not cancel the PMACA and advised him that failure to contact BLM within the allowed time would result in the issuance of a proposed decision to cancel his PMACA and repossess the wild horse.

In a response filed with BLM on July 18, 1996, appellant stated that a domestic violence order (DVO) which had been obtained by Barbara Sampson when she and appellant separated had prevented him from entering her property. Appellant noted that this DVO had been renewed every 3 months thereafter. Appellant recounted that he had been "awarded the horse in the divorce," and he explained that, when his final divorce decree became final, he would be able to enter Barbara Sampson's property and move the horse to his new residence.

Appellant also advised BLM that two employees of the Bannock Humane Society had visited Barbara Sampson's property to check on the horse at his request. He informed BLM that these individuals had found the horse to be in good condition and he enclosed letters from them to verify this fact. 2/

Appellant asserted that he never abandoned the horse, and that he would have kept the horse in his care if he not been prevented from doing so by the DVO. He said he tried to get the horse, but that Barbara Sampson "would not let me have him."

In his decision cancelling the PMACA, the Area Manager referenced various conditions of adoption as set forth in the PMACA. In particular, he noted that under these terms:

Adopters are financially responsible for providing proper care for wild horses.

Adopters shall notify the authorized officer within 30 days of any change in the adopter's address.

Failure to comply with these terms may result in the cancellation of the agreement, repossession of the animal, and disapproval of requests for adoption of additional animals.

2/ Both employees advised John Sampson that they found the horse in good condition. Furthermore, one of the employees, Doreen Young, a 25-year member of the Humane Society, opined that, in her view, appellant's actions were not those of a person who had abandoned his animal and that appellant was totally committed to the health and well-being of the horse. See Letter dated July 13, 1996.

The Area Manager noted that a review of the information provided by appellant revealed that, while he had been unable to remove the horse from his former residence because a restraining order prevented him from entering the property, the restraining order did not prevent him from fulfilling his financial obligation by mailing funds to Barbara Sampson for the care of the horse. Additionally, the Area Manager pointed out that appellant did not notify BLM of his move to a new residence within 30 days as required by the regulations. The Area Manager concluded that both of these actions constituted violations of the PMACA. Noting that any violation of the terms of a PMACA constitutes a prohibited act as specified in 43 C.F.R. Part 4700, Subpart 4760.1(a), the Area Manager declared that he was cancelling the PMACA pursuant to 43 C.F.R. ' 4770.3(b).

In his statement of reasons for appeal (SOR), appellant emphasizes that, during the period in question, the horse was being well cared for by Barbara Sampson. Appellant argues that, as both his spouse and, given the issuance of the DVO, as the sole possessor of the property on which the horse was being pastured, she had necessarily assumed the responsibility for the care and feeding of Cobalt and the other horses maintained thereon.

Appellant notes that during the time he was displaced from his permanent residence, the Humane Society visited Barbara Sampson, at his request, to assure that the horse was being properly cared for and, he suggests, that this is clear evidence that he never intended to abandon the horse.

Furthermore, appellant argues that there is no requirement in the PMACA or elsewhere that he mail funds to his ex-wife to expressly provide care for the horse. According to appellant, he and his spouse had mutual community obligations, including the care and feeding of all of the animals located on their property, which responsibility presumably devolved solely upon Barbara Sampson when she obtained the restraining order. Moreover, appellant notes that he never received any type of a request from his spouse that he provide specific funds for the care and feeding of Cobalt.

With respect to the Area Manager's other basis for cancellation of the PMACA, appellant asserts that he did not change his address, but rather was temporarily required to live elsewhere pursuant to the court order. Appellant claims that his permanent address was always the address listed in the PMACA. Based on all of the foregoing points, appellant requests that the decision of the Area Manager be reversed and the horse returned to him.

Together with his SOR, appellant submitted a request that the Board stay any transfer of ownership of the horse pending resolution of the instant appeal. The Board granted this request by Order dated October 26, 1996. ^{3/} For the reasons provided below, we now reverse the BLM decision.

^{3/} This Order also noted that the subject case file had not been received from BLM and requested that BLM transmit the case file. The Board had still not received the case file on Feb. 24, 1999, and, by Order issued on that date, directed BLM to immediately transmit the case file to the Board. The Board received the case file on Mar. 12, 1999.

[1] The Wild Free-Roaming Horses and Burros Act of 1971, as amended, 16 U.S.C. ' 1333(b)(2)(B) (1994), authorizes the Secretary of the Interior to place wild horses with qualified applicants who can assure humane treatment and care. See 43 C.F.R. Subpart 4750. Title to horses placed in private care remains with the Government for a minimum of 1 year after placement and execution of the PMACA and remains in the Government until BLM issues a certificate of title. See 16 U.S.C. ' 1333(c) (1994); 43 C.F.R. ' ' 4750.4 and 4750.5.

A cooperative agreement for the private maintenance of livestock under the protection of the Wild Free-Roaming Horses and Burros Act may be summarily cancelled by BLM upon good and sufficient evidence that the terms of the agreement have been violated. Where a BLM inspection and/or credible reports by third parties reveal that the animals are in a deteriorating condition, this evidence will, in the absence of a showing that persuasive countervailing evidence exists, constitute good and sufficient evidence that terms of the agreement have been violated. Freddie R. Mason, 126 IBLA 28, 29 (1993); Grant F. Morey, 108 IBLA 354, 356 (1989); Mary Magera, 101 IBLA 116, 119 (1988), quoting Dennis Turnipseed, 66 IBLA 63, 67 (1982). It must be noted, however, that, in its decision in the instant case, BLM did not charge appellant with substandard care or inhumane treatment of the horse. Rather, the basis for cancelling the PMACA was the allegation by Barbara Sampson that appellant had abandoned the horse and had not fulfilled his financial obligation to provide care for the horse, and appellant's asserted failure to notify BLM of a change of address. Notwithstanding the foregoing, we believe that, under the facts of this case, cancellation of the PMACA was not justified.

Initially, however, we will address appellant's assertion that he was "awarded the horse in the divorce." As noted above, title to horses placed in private care remains with the Government for a minimum of 1 year after placement and execution of the PMACA and remains in the Government until BLM issues a certificate of title. 16 U.S.C. ' 1333(c) (1994); 43 C.F.R. ' ' 4750.4 and 4750.5. It is undisputed that no certificate of title had been issued to appellant. Thus, title to the horse remained in the United States and the question of ownership of the horse was not susceptible of resolution in the divorce decree.

For its part, BLM argues that appellant's failure to provide money to Barbara Sampson for the care of the horse is, in and of itself, a violation of the PMACA. Although BLM relates Barbara Sampson's charges that appellant had not been financially responsible for the horse and that she had provided the necessary care, there is no evidence that she told BLM that she would no longer care for the horse in the future. Thus, this case stands in contrast to the situation explored in Mark L. Williams, 130 IBLA 45 (1994).

In the Williams case, the Board held that it was proper for BLM to cancel a PMACA and repossess the horses covered by the PMACA after it received notice from Pattie Herring, who was caring for the horses, that she would no longer provide care because the bills for the care and maintenance had not been paid. The Board found that BLM's action was triggered by evidence that the well-being of the horses was in jeopardy. Id. at 48.

In the instant case, there is no evidence that the well-being of the horse was in jeopardy. On the contrary, the letters from the Bannock Humane Society members attest to the fact that the horse was in good condition.

Nor is there any evidence that Barbara Sampson ever requested that appellant contribute to the care and feeding of the horse. Indeed, it is even unclear whether or not the expenditures made by Barbara Sampson could not be attributable, at least partially, to appellant.

Thus, we note that in a September 6, 1996, letter to Senator Craig, appellant explained that, from July 1995 until July 1996 when the divorce was final, Barbara Sampson received \$400 a month from a rental property they owned "free and clear." Appellant noted that his share of the rent for that period of time would have been \$2,400. He also stated that he paid \$453 in back taxes on the rental property. According to appellant, when the divorce was finalized, he was not reimbursed for the rental or the taxes, and he lost the rental property. Appellant believes "this more than covers any cost of boarding a horse." It is, therefore, by no means clear that appellant could not have been properly credited with some of the expenditures made with respect to the horse's maintenance.

In any event, we find that, absent some evidence that appellant had affirmatively refused to contribute to the care and feeding of the horse, cancellation of the PMACA under the facts of this case cannot be justified on the ground that appellant was not financially responsible for providing proper care for the horse.

As its second reason for cancelling the PMACA, BLM relied upon appellant's failure to notify it of his change in address. We note that paragraph (f) of the Terms of Adoption set forth in the Standard Application for Adoption Form (OMB No. 1004-0042) provides that "[a]dopters shall notify the authorized officer within 30 days of any change in the adopter's address." However, we note that it is expressly noted on this form that "Failure to comply with these terms may result in the cancellation of the agreement." See BLM Handbook, H-4570-2, Illustration 1 at 2 (emphasis supplied). Thus, cancellation is not mandatory where there has been a failure to comply with the terms of the PMACA. See Noel Benoist, 131 IBLA 138, 143 (1994). The evidence in this case shows that the horse was not in jeopardy. Therefore, BLM's inability to contact appellant did not put the horse at risk. Under the circumstances of the instant appeal, a violation of the notice requirement must be deemed to be merely a technical violation which does not justify cancellation of the PMACA. Id.

The Board has held that a BLM decision cancelling a PMACA will be reversed where the record on appeal contains insufficient evidence of improper care or abandonment of the horse covered by the PMACA, or any other failure to comply with the terms of the PMACA sufficient to justify such action. Noel Benoist, *supra*. We hold that, based on the record before us, there is simply not an adequate basis upon which to predicate cancellation of the PMACA.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. ' 4.1, the decision appealed from is reversed.

James L. Burski
Administrative Judge

I concur:

James L. Byrnes
Chief Administrative Judge